

1 H.483

2 An act relating to the accountability and oversight of approved independent
3 schools that are eligible to receive public tuition

4 It is hereby enacted by the General Assembly of the State of Vermont:

5 * * * Findings * * *

6 Sec. 1. FINDINGS AND PURPOSE

7 (a) The Vermont Constitution provides that “a competent number of
8 schools ought to be maintained in each town unless the general assembly
9 permits other provisions for the convenient instruction of youth.” VT Const.
10 Ch II, § 68. Interpreting this provision in Brigham v. State, 692 A.2d 384
11 (1997), the Vermont Supreme Court stated that “[t]he state may delegate to
12 local towns and cities the authority to finance and administer the schools
13 within their borders; it cannot, however, abdicate the basic responsibility for
14 education by passing it on to local governments, which are themselves
15 creations of the state.” Id. at 395.

16 (b) From this, it is evident that the State has a constitutional obligation to
17 provide public education to its youth. Many Vermont school districts operate
18 schools, but others do not. Vermont is a relatively sparsely populated and
19 mountainous state that has made the operation of public schools unviable in
20 certain regions of the State. Students who live in these regions do not have the
21 choice of enrolling in a public school in their district; their only choice is to

1 enroll in a public school operated by another school district or an independent
2 school or to be homeschooled.

3 (c) Therefore, in order to fulfill its constitutional requirement to provide
4 public education to its youth, the State permits school districts that do not
5 operate schools (nonoperating school districts) to use public funds to send their
6 resident youth to public schools operated by other school districts or to certain
7 independent schools.

8 (d) In 2020, the Office of the Vermont State Auditor authored a report
9 comparing the statutes and rules applicable to public schools in Vermont to the
10 statutes and rules applicable to Vermont's independent schools. In a letter
11 dated December 17, 2020, the Secretary of Education provided comments on a
12 draft of the Auditor's report. In his closing, the Secretary stated, "This
13 evolution in education policy has taken place in the absence of a single,
14 coherent design for the system as a whole. The resulting differences
15 highlighted in this report should not come as a surprise. They should, along
16 with all education statutes and regulations, be examined to determine whether
17 the current framework makes sense, and whether it enables the state to provide
18 all students equal access to a high-quality education."

19 * * * Approved Independent Schools Eligible to Receive Public Tuition * * *

20 Sec. 2. 16 V.S.A. § 166 is amended to read:

21 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

1 (a) Authority. An independent school may operate and provide elementary
2 education or secondary education if it is either approved or recognized as set
3 forth in this section.

4 (b) Approved independent schools. On application, the State Board shall
5 approve an independent school that offers elementary or secondary education
6 if it finds, after opportunity for hearing, that the school provides a minimum
7 course of study pursuant to section 906 of this title and that it substantially
8 complies with all statutory requirements for approved independent schools and
9 the Board's rules for approved independent schools. ~~An independent school
10 that intends to accept public tuition shall be approved by the State Board only
11 on the condition that the school agrees, notwithstanding any provision of law
12 to the contrary, to enroll any student who requires special education services
13 and who is placed in or referred to the approved independent school as an
14 appropriate placement and least restrictive environment for the student by the
15 student's individualized education program team or by the local education
16 agency; provided, however, that this requirement shall not apply to an
17 independent school that limits enrollment to students who are on an
18 individualized education program or a plan under Section 504 of the
19 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
20 a written agreement between the local education agency and the school. Except
21 as provided in subdivision (6) of this subsection, the Board's rules must at~~

1 minimum require that the school have the resources required to meet its stated
2 objectives, including financial capacity, faculty who are qualified by training
3 and experience in the areas in which they are assigned, and physical facilities
4 and special services that are in accordance with any State or federal law or
5 regulation. Approval may be granted without State Board evaluation in the
6 case of any school accredited by a private, State, or regional agency recognized
7 by the State Board for accrediting purposes, provided that the State Board shall
8 determine that the school complies with all student enrollment provisions
9 required by law.

10 * * *

11 (5) The State Board may revoke, suspend, or impose conditions upon
12 the approval of an approved independent school, after having provided an
13 opportunity for a hearing, for substantial failure to comply with the minimum
14 course of study, for failure to demonstrate that the school has the resources
15 required to meet its stated objectives, for failure to comply with statutory
16 requirements or the Board's rules for approved independent schools, or for
17 failure to report under subdivision (4) of this subsection (b). Upon that
18 revocation or suspension, students required to attend school who are enrolled
19 in that school shall become truant unless they enroll in a public school, an
20 approved or recognized independent school, or a home study program.

21 * * *

1 (9)(A) An approved independent school that intends to accept public
2 tuition shall be approved by the State Board as eligible to receive public tuition
3 only on the condition that the school complies with the following
4 requirements; provided, however, that this subdivision (9) shall not apply to
5 therapeutic approved independent schools as defined in subdivision 11(36) of
6 this title:

7 (i) the school agrees, notwithstanding any provision of law to the
8 contrary, to enroll any student who requires special education services and who
9 is placed in or referred to the approved independent school as an appropriate
10 placement and least restrictive environment for the student by the student's
11 individualized education program team or by the local education agency;

12 (ii) the school shall provide local education agencies with an
13 attendance report for students attending the school on public tuition at an
14 interval determined by and in a format approved by the Agency;

15 (iii) the school shall provide local education agencies with a report
16 of the academic progress of students attending the school on public tuition at
17 an interval determined by and in a format approved by the Agency;

18 (iv) the school shall provide local education agencies with a report
19 of any enrollment change for students attending the school on public tuition,
20 including withdrawals, suspensions, or expulsions, provided that the school

1 shall notify a local education agency the same school day if the school is
2 considering expelling a publicly tuitioned student;

3 (v) the school has adopted and implemented policies and
4 procedures to comply with the Vermont Public Accommodations Act,
5 9 V.S.A. chapter 139 and the Vermont Fair Employment Practices Act,
6 21 V.S.A. chapter 5, subchapter 6;

7 (vi) the school shall not use an admissions process for publicly
8 tuitioned students that includes mandatory interviews, academic entrance
9 exams, academic history, mandatory campus visits, or consideration of ability
10 to pay for any costs or fees, provided that:

11 (I) the school may request proof of a student's most recently
12 completed grade;

13 (II) the school may set a capacity limit on the number of
14 publicly tuitioned students the school will accept; and

15 (III) the school shall establish a nondiscriminatory selection
16 process when the number of publicly tuitioned student applicants exceeds any
17 capacity limits;

18 (vii) the school shall provide the results of all State-mandated
19 assessments of students on public tuition to the Agency of Education, which
20 shall publish the results on its website in a manner consistent with the
21 publication of the same results for public school students;

1 (viii) the school's tuition rate for publicly tuitioned students shall
2 be the same as or lower than the tuition rate for private payer students and both
3 tuition rates shall be published on the school's website and reported to the
4 Agency of Education annually;

5 (ix) publicly tuitioned students shall not be charged an application
6 fee, an academic fee, or any other fees for academic materials; and

7 (x) the school attests on or before August 1 of each year to
8 compliance with the requirements of this subdivision (9), all other statutory
9 requirements for approved independent schools, and the Board's rules for
10 approved independent schools, on a form created by the Agency, including
11 documentation of the following:

12 (I) a statement of nondiscrimination, posted on the school's
13 website and included in the school's application materials, that is consistent
14 with the Vermont Public Accommodations Act, 9 V.S.A. chapter 139 and the
15 Vermont Fair Employment Practices Act, 21 V.S.A. chapter 5, subchapter 6;

16 (II) an assurance, signed by the head of school, that the school
17 complies with the Vermont Public Accommodations Act in all aspects of the
18 school's admissions and operations; and

19 (III) an assurance, signed by the head of school, that no public
20 funds were used to subsidize the tuition of private payer students.

* * * Tuition * * *

Sec. 3. 16 V.S.A. § 821 is amended to read:

§ 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY
SCHOOLS OR PAY TUITION

(a) Each school district shall maintain one or more approved schools within the district in which elementary education for its resident students in kindergarten through grade six is provided unless:

* * *

1 (d) Notwithstanding subdivision (a)(1) of this section, the electorate of a
2 school district that does not maintain an elementary school may grant general
3 authority to the school board to pay tuition for an elementary student at an
4 approved independent elementary school eligible to receive public tuition or an
5 independent school meeting education quality standards pursuant to sections
6 823 and 828 of this chapter upon notice given by the student's parent or legal
7 guardian before April 15 for the next academic year.

8 Sec. 4. 16 V.S.A. § 822 is amended to read:

9 § 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR
10 PAY TUITION

11 (a) Each school district shall maintain one or more approved high schools
12 in which high school education is provided for its resident students unless:

13 (1) the electorate authorizes the school board to close an existing high
14 school and to provide for the high school education of its students by paying
15 tuition to a public high school, an approved independent high school eligible to
16 receive public tuition, or an independent school meeting education quality
17 standards, to be selected by the parents or guardians of the student, ~~within or~~
18 ~~outside the State~~; or

19 * * *

20 (c)(1) A school district may both maintain a high school and furnish high
21 school education by paying tuition:

1 (A) to a public school as in the judgment of the school board may
2 best serve the interests of the students; or

3 (B) to an approved independent school eligible to receive public
4 tuition or an independent school meeting education quality standards if the
5 school board judges that a student has unique educational needs that cannot be
6 served within the district or at a nearby public school.

7 * * *

8 Sec. 5. 16 V.S.A. § 823 is amended to read:

9 § 823. ELEMENTARY TUITION

10 * * *

11 (b) Unless the electorate of a school district authorizes payment of a higher
12 amount at an annual or special meeting warned for the purpose, the tuition paid
13 to an approved independent elementary school eligible to receive public tuition
14 or an independent school meeting education quality standards shall not exceed
15 the least of:

16 * * *

17 Sec. 6. 16 V.S.A. § 824 is amended to read:

18 § 824. HIGH SCHOOL TUITION

19 (a) Tuition for high school students shall be paid by the school district in
20 which the student is a resident.

21 * * *

1 (c) The district shall pay an amount not to exceed the average announced
2 tuition of Vermont union high schools for the year of attendance for its
3 students enrolled in an approved independent school eligible to receive public
4 tuition that does not functioning function as a Vermont area career technical
5 center, or any higher amount approved by the electorate at an annual or special
6 meeting warned for that purpose.

7 Sec. 7. 16 V.S.A. § 827 is amended to read:

8 § 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN

9 APPROVED INDEPENDENT HIGH SCHOOL AS THE PUBLIC

10 HIGH SCHOOL OF A SCHOOL DISTRICT

11 (a) A school district not maintaining an approved public high school may
12 vote on such terms or conditions as it deems appropriate, to designate three or
13 fewer approved independent schools eligible to receive public tuition or public
14 high schools as the public high school or schools of the district.

15 (b) Except as otherwise provided in this section, if the board of trustees or
16 the school board of a designated school votes to accept this designation, the
17 school shall be regarded as a public school for tuition purposes under
18 subsection 824(b) of this title, and the sending school district shall pay tuition
19 only to that school, and to any other school designated under this section, until
20 such time as the sending school district or the designated school votes to
21 rescind the designation.

1 (c) A parent or legal guardian who is dissatisfied with the instruction
2 provided at a designated school or who cannot obtain for ~~his or her~~ the parent's
3 or legal guardian's child the kind of course or instruction desired there, or
4 whose child can be better accommodated in an approved independent school
5 eligible to receive public tuition or public high school nearer ~~his or her~~ the
6 child's home during the next academic year, may request on or before April 15
7 that the school board pay tuition to another approved independent school
8 eligible to receive public tuition or public high school selected by the parent or
9 guardian.

10 * * *

11 (e) ~~Notwithstanding any other provision of law to the contrary:~~
12 ~~(1) the school districts of Pawlet, Rupert, and Wells may designate a~~
13 ~~public high school located in New York as the public high school of the district~~
14 ~~pursuant to the provisions of this section;~~
15 ~~(2) unless otherwise directed by an affirmative vote of the school~~
16 ~~district, when the Wells Board approves parental requests to pay tuition to a~~
17 ~~nondesignated approved independent or public school, the Board shall pay~~
18 ~~tuition in an amount not to exceed the base education amount as determined~~
19 ~~under section 4011 of this title for the fiscal year in which tuition is being paid;~~
20 ~~and~~

1 ~~(3) unless otherwise directed by an affirmative vote of the school~~
2 ~~district, when the Strafford Board approves a parental request to pay tuition to~~
3 ~~a nondesignated approved independent or public school, the Board shall pay~~
4 ~~tuition to the nondesignated school pursuant to section 824 of this title for the~~
5 ~~year in which the student is enrolled; provided, however, that it shall not pay~~
6 ~~tuition in an amount that exceeds the tuition paid to the designated school for~~
7 ~~the same academic year. [Repealed.]~~

8 Sec. 8. 16 V.S.A. § 828 is amended to read:

9 § 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

10 ~~(a)~~ A school district shall not pay the tuition of a student except to a public
11 school, an approved independent school eligible to receive public tuition
12 located in Vermont, an independent school meeting education quality
13 standards, a tutorial program approved by the State Board, an approved
14 education program, a therapeutic school, or an independent school in another
15 state ~~or country~~ located within 25 miles of the Vermont border and approved
16 under the laws of that state ~~or country~~, nor shall payment of tuition on behalf
17 of a person be denied on account of age. Unless otherwise provided, a person
18 who is aggrieved by a decision of a school board relating to eligibility for
19 tuition payments, the amount of tuition payable, or the school ~~he or she~~ the
20 person may attend, may appeal to the State Board and its decision shall be
21 final.

1 (b) An independent school in another state located within 25 miles of the
2 Vermont border that is approved under the laws of that state is eligible to
3 receive public tuition if the following conditions are met:

4 (1) The independent school has adopted and implemented policies and
5 procedures to comply with all antidiscrimination laws applicable to public
6 schools in the state where the independent school is located and makes
7 reasonable efforts to enforce those policies and procedures, even if those laws
8 by their terms do not apply to the independent school. The school shall attest
9 to compliance with this subdivision on or before August 1 of each year.

10 (2) The independent school posts and maintains on its website in a
11 prominent place its policy to comply with all antidiscrimination laws that apply
12 to public schools in the state where the independent school is located. The
13 school shall attest to compliance with this subdivision on or before August 1 of
14 each year.

15 (3) The independent school complies with the requirements of
16 subdivision 166(b)(9) of this title, provided that subdivisions 166(b)(9)(v) and
17 (x) of this title shall not apply. The school shall attest to compliance with this
18 subdivision on or before August 1 of each year.

19 (4) The independent school provides an assurance on or before August 1
20 of each year, signed by the head of school, that no public funds were used to
21 subsidize the tuition of private payer students.

1 (b) Students.

2 (1) A Vermont resident who has completed grade 10 but has not
3 received a high school diploma is eligible to participate in the Program if:

4 (A) the student:

5 (i) is enrolled in:

6 (I) a Vermont public school, including a Vermont career
7 technical center;

8 (II) a public school in another state or an approved independent
9 school that is designated as the public secondary school for the student's
10 district of residence; or

11 (III) an approved independent school eligible to receive public
12 tuition in Vermont to which the student's district of residence pays publicly
13 funded tuition on behalf of the student;

14 (ii) is assigned to a public school through the High School
15 Completion Program; or

16 (iii) is a home study student;

17 (B) dual enrollment is an element included within the student's
18 personalized learning plan; and

19 (C) the secondary school and the postsecondary institution have
20 determined that the student is sufficiently prepared to succeed in a dual

1 enrollment course, which can be determined in part by the assessment tool or
2 tools identified by the participating postsecondary institution.

3 * * *

4 * * * Special Education * * *

5 Sec. 12. 16 V.S.A. § 11 is amended to read:

6 § 11. CLASSIFICATIONS AND DEFINITIONS

7 (a) As used in this title, unless the context otherwise clearly requires:

8 * * *

9 (36) “Therapeutic approved independent school” means an approved
10 independent school that limits enrollment to students who are on an
11 individualized education program or a plan under Section 504 of the
12 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
13 a written agreement between the local education agency and the school.

14 * * *

15 Sec. 13. 16 V.S.A. § 2962 is amended to read:

16 § 2962. EXTRAORDINARY SPECIAL EDUCATION REIMBURSEMENT

17 * * *

18 (e) Under section 2973 of this title, a supervisory union, in its role as the
19 local education agency, may place a student with an individualized education
20 program under the Individuals with Disabilities Education Act, 20 U.S.C.
21 chapter 33, with ~~certain~~ approved independent schools ~~that accept public~~

1 ~~tuition~~ eligible to receive public tuition. If the approved independent school is
2 entitled to special education cost reimbursement under that section, it may bill
3 the supervisory union for excess special education costs incurred by the
4 independent school in providing special education services to that student
5 beyond those covered by general tuition. If those costs for that student exceed
6 the extraordinary expenditures threshold as defined in subdivision (a)(2) of this
7 section, the supervisory union shall be entitled to extraordinary reimbursement
8 under this section for that student as if it incurred those costs directly.

9 Sec. 14. 16 V.S.A. § 2973 is amended to read:

10 § 2973. INDEPENDENT SCHOOL TUITION RATES

11 (a)(1) Notwithstanding any provision of law to the contrary, an approved
12 independent school that ~~accepts~~ is eligible to receive public tuition shall enroll
13 any student with an individualized education program who requires special
14 education services and who is placed in the approved independent school as an
15 appropriate placement and least restrictive environment for the student by the
16 student's individualized education program team or by the local education
17 agency (LEA); provided, however, that this requirement shall not apply to an
18 independent school that limits enrollment to students who are on an
19 individualized education program or a plan under Section 504 of the
20 Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to
21 a written agreement between the LEA and the school.

1 * * *

2 (b)(1) The Secretary of Education shall establish minimum standards of
3 services for students receiving special education services in independent
4 schools in Vermont and may advise independent schools as to the need for
5 certain special education services in Vermont.

6 (2)(A) The Secretary of Education shall set, after consultation with
7 independent schools in Vermont, and based on the level of services provided
8 by the schools, the maximum rates to be paid by the Agency and supervisory
9 unions or school districts for tuition, room, and board for residential placement
10 of students who require special education services. The amount charged by an
11 independent school for tuition shall reflect the school's actual or anticipated
12 costs of providing special education services to the student and shall not
13 exceed the maximum rates set by the Secretary, provided that the Secretary
14 may permit charges in excess of these maximum rates where the Secretary
15 deems warranted.

16 * * *

17 (C)(i) The Secretary shall set, after consultation with independent
18 schools in Vermont, the maximum tuition rates to be paid by the Agency and
19 supervisory unions or school districts to ~~independent schools that limit~~
20 ~~enrollment to students who are on an IEP or a plan under Section 504 of the~~
21 ~~Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to~~

1 ~~a written agreement between the LEA and the school~~ therapeutic approved
2 independent schools. The maximum tuition rates shall be based on the level of
3 services provided by the school.

4 * * *

5 * * * Public Accommodations Act * * *

6 Sec. 14a. 9 V.S.A. § 4501 is amended to read:

7 § 4501. DEFINITIONS

8 As used in this chapter:

9 (1) “Place of public accommodation” means any school, restaurant,
10 store, establishment, or other facility at which services, facilities, goods,
11 privileges, advantages, benefits, or accommodations are offered to the general
12 public. As used in this chapter, the term “school” includes public schools,
13 independent schools, regional career technical education centers,
14 postsecondary career technical education centers, adult career technical
15 education centers, comprehensive high schools, approved education programs,
16 tutorial programs, distance learning schools, postsecondary schools, and any
17 other type of school or educational institution.

18 * * *

* * * Forms and Report * * *

Sec. 15. AGENCY OF EDUCATION; FORMS; REPORT

(a) Academic progress and attendance. On or before January 15, 2024, the Agency of Education shall create a standard form or forms for public and approved independent schools to report the attendance record and academic progress of tuitioned students to the student's local education agency, as well as establish the frequency with which such information shall be reported. In developing the form or forms, the Agency shall consult with the Vermont Principals' Association, the Vermont School Board's Association, the Vermont Superintendents Association, the Vermont National Education Association, and the Vermont Independent Schools Association.

(b) Compliance attestation. On or before July 1, 2023, the Agency of Education shall create an attestation form to be used by approved independent schools eligible to receive public tuition to certify annual compliance with all statutory requirements for approved independent schools and the Board's rules for approved independent schools, as required in 16 V.S.A. § 166(b)(A)(9)(vi).

(c) Report. In conjunction with developing the compliance attestation form under subsection (b) of this section, the Agency shall review all laws, rules, quality standards, reporting requirements, and required policies applicable to public schools and make a written recommendation to the House and Senate Committees on Education regarding whether any public school requirements

1 not already applicable should also apply to approved independent schools
2 eligible to receive public tuition. In conducting its review, the Agency shall
3 consult the Vermont Independent School Association, the Vermont School
4 Boards Association, and the Vermont National Education Association. The
5 Agency shall submit a written report with its recommendations and the
6 recommendations of the organizations it has consulted with on or before
7 December 1, 2023.

8 * * * Transitions * * *

9 Sec. 16. [Deleted.]

10 Sec. 17. OUT-OF-STATE SCHOOL ATTENDANCE TRANSITION

11 A student enrolled for the 2022–2023 school year in, or that has been
12 accepted for enrollment for the 2023–2024 school year by, an approved
13 independent school in another state or country that would not be eligible to
14 receive public tuition under 16 V.S.A. § 828 as amended by this act shall
15 continue to be entitled to public tuition until such time as the student graduates
16 from that school.

17 * * * Moratorium on Approval of New Approved Independent Schools * * *

18 Sec. 18. MORATORIUM ON NEW APPROVED INDEPENDENT

19 SCHOOLS ELIGIBLE TO RECEIVE PUBLIC TUITION

20 Notwithstanding any provision of law to the contrary, the State Board of
21 Education shall be prohibited from providing initial approval for an approved

1 independent school to be eligible to receive public tuition to any school that
2 submits an initial attestation pursuant 16 V.S.A. § 166(b)(9)(x) after August 1,
3 2023. The moratorium created under this section shall remain in effect until
4 further direction by the General Assembly.

5 Sec. 19. POSITION DEVELOPMENT; REPORT

6 To ensure students attending an approved independent school eligible to
7 receive public tuition receive the services they are entitled to and to assist
8 students who believe they have been unfairly denied admission to an approved
9 independent school eligible to receive public tuition, on or before January 15,
10 2024, the Agency of Education shall provide the House and Senate
11 Committees on Education with a detailed recommendation for a Public Tuition
12 Student Advocate position. The recommendation shall include:

- 13 (1) a job description, including qualification criteria;
14 (2) a determination of whether a new position would need to be created
15 or whether the duties of the Public Tuition Student Advocate can be assigned
16 to a current position within the Agency of Education; and
17 (3) any necessary appropriations to fund this position.

18 * * * Effective Dates * * *

19 Sec. 20. EFFECTIVE DATES

20 (a) This section, Sec. 10 (repeal), and in Sec. 15, subdivision (b)
21 (compliance attestation) shall take effect on passage.

- 1 (b) Sec. 9 (16 V.S.A. § 828) and, in Sec. 2, 16 V.S.A. § 166(b)(9)(A)(vi)
- 2 and (ix) (admissions process and fees) shall take effect on July 1, 2024.
- 3 (c) The remainder of this act shall take effect on July 1, 2023.